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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 URIEL VALDOVINO TORRES,

7 Plaintiff,

8 v.

9 UNITED STATES OF AMERICA,

10 Defendant.

CASE NO. CV10-5896BHS
(CR08-5533BHS)

ORDER COMPELLING
TESTIMONY OF FORMER
COUNSEL

11 This matter comes before the Court on Defendant's motion to compel the
12 testimony of attorney Karen Unger (Dkt. 15). The Court has reviewed the brief filed in
13 support of the motion and the remainder of the file and hereby grants the motion for the
14 reasons stated herein.

15 On December 6, 2010, Plaintiff filed a 28 U.S.C. § 2255 motion ("2255 motion"),
16 which included an ineffective assistance of counsel claim regarding his former counsel
17 Karen Unger. Dkt. 1 at 3 (Plaintiff's Motion). As the Ninth Circuit has explained:
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19 It has long been the rule in the federal courts that, where a habeas
20 petitioner raises a claim of ineffective assistance of counsel, he waives the
21 attorney-client privilege as to all communications with his allegedly
22 ineffective lawyer. *See, e.g., Wharton v. Calderon*, 127 F.3d 1201, 1203
(9th Cir. 1997); *Tasby v. United States*, 504 F.2d 332, 336 (8th Cir. 1974);
Laughner v. United States, 373 F.2d 326, 327 (5th Cir. 1967).


23 *Bittaker v. Woodford*, 331 F.3d 715, 716 (9th Cir. 2003) (holding that the scope of the
24 waiver extends only to the litigation of the federal habeas petition; i.e., it does not waive
25 the attorney-client privilege for all time and all purposes); *U.S. v. Chase* 340 F.3d 978,
26 992 n. 7 (9th Cir. 2003) (following *Bittaker*); *see also* Washington Rules of Professional
27 Conduct 1.6(b)(5) (confidentiality of information, lawyer may reveal information relating
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1 to representation of client to respond to allegations in a proceeding concerning the
2 lawyer's representation of the client). Having considered the record and the remainder of
3 the file in this case, the Court finds that the testimony of Karen Unger, former defense
4 counsel to Plaintiff, is critical to understanding the facts and circumstances of this case
5 and the attorney's representation of Defendant and the advice given to Defendant during
6 the course of this prosecution.

7 Therefore, it is hereby **ORDERED** that Karen Unger come before this court on
8 August 23, 2011, at 10:00 a.m. to testify on this matter.

9 DATED this 26th day of July, 2011.

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BENJAMIN H. SETTLE
United States District Judge